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IN THE

Supreme Court of the United States

October Term, 1957
No. 538

AURELIO CANO and CHARLES MARTIN,
Appellants

v.

COMMONWEALTH OF PENNSYLVANIA,
Appellee

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

REPLY OF APPELLEE

LEON EHRLICH
Deputy Attorney General
THOMAS D. McBRIDE
Attorney General
Attorneys for Appellee

State Capitol
Harrisburg, Pa.

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On Appeal From The Supreme Court of Pennsylvania.

REPLY OF APPELLEE

STATEMENT OF THE GROUNDS ON WHICH JURISDICTION IS INVOKED

It is denied that this Honorable Court has jurisdiction in this matter. This case is one in which the only issues raised were factual ones and an interpretation of a State statute under State law, in no way raising any questions under the United States Constitution or laws. Further, the decision rests on adequate grounds under State laws.

The Appellant's statement (page 2 that ". . . The issues of constitutionality arise because the Superior

Court of Pennsylvania interpreted . . . (the Pennsylvania Anthracite Coal Mine Law) . . . as authorizing imprisonment of Appellants for alleged technical violations of mine safety regulations by their employees. . . ." is a misstatement of the case. The Superior Court did not so interpret the law. Appellants were tried and found guilty of their *own* actions and neglect to comply with the mine safety laws. The testimony and opinions of the Pennsylvania trial and appellate courts clearly show such to be the case. While Appellant Cano may have been away from the mine at the very time of the accident which took the lives of five men, he was present and actively directing mining operations when the violations of the Mine Act occurred for which he was tried. Appellants were not tried for causing the accident. Whether Appellant Martin was in the mine or not is not clear, but that he knew of the operation, that he was in charge of the mine in the absence of Cano and that he jointly with Cano owned and actively operated the mine is not in doubt.

There is no problem in this case of vicarious liability as contended by Appellants. The case involves the question of direct liability for the violation by two mine operators of mine safety laws.

Though Appellants argue that the statute under which the prosecution was brought is vague, it is submitted that the meaning of the statute and the obligations imposed thereunder are clear. The opinion of the Superior Court of Pennsylvania in this regard is quite adequate and sufficient.

Though Appellants argue that they were deprived of due process, a review of the statement of the case

will prove the inaccuracy of their contention. Appellants received every consideration for the protection of their rights under the laws of the Commonwealth of Pennsylvania and the provisions of the Act, the violations of which brought about these proceedings.

In view of the foregoing, the claim that this Court has jurisdiction cannot be sustained. The statute in question is not and cannot be deemed repugnant to the Constitution and laws of either the Commonwealth of Pennsylvania or of the United States.

STATUTE INVOLVED

Reported in Appellant's Statement

QUESTION PRESENTED

Have these defendants, or either of them, had vicarious criminal liability imposed upon them?

STATEMENT OF THE CASE

This prosecution arose out of an occurrence in the Appellants' mine on March 22, 1952, as a result of which five miners lost their lives when the mine was flooded from adjacent workings.

The Appellants herein were arrested on a warrant issued by a Judge of the Schuylkill County Court of Quarter Sessions. The warrant issued on the basis of an affidavit filed before the judge by an Anthracite Mine Inspector pursuant to Article XVII, Section 1 of the Act of June 2, 1891, P. L. 176 as amended, 52 P.S. §511, charging the Appellants with violations of the Act regarding limitations on drilling ahead, brake requirements, air measurement reports, and limitations on explosive storage requirements. The offense is not a common law offense, but purely a statutory one based upon the police power of the State. There was no presentment to or indictment by the Grand Jury inasmuch as the statute herein involved provided otherwise. The Appellants demanded and secured a jury trial. The Appellants were acquitted on seven counts and convicted on five counts. Motions in arrest of judgment and for a new trial were filed. The court refused the motion for a new trial as to all counts but granted a motion for arrest of judgment on the first count. On each of the four remaining charges the Appellants were sentenced to the maximum penalty of $500.00 fine and three months in the county prison or a total of $2,000.00 and one year in the county

prison. Appeals were taken to the Superior Court. That Court affirmed the judgment of the lower court. A petition for allowance of appeal to the Supreme Court of Pennsylvania was then filed. The appeal was allowed on the question of whether the prosecution was properly commenced by information rather than indictment. The Supreme Court affirmed the judgment of the Superior Court. Subsequently, the Supreme Court refused Appellants' motion for a rehearing.

The distortion of this case by Appellants is most apparent from the following paragraph on page 8 of Appellants' Statement:

> "The Superior Court, faced with this type of evidence as to responsibility, nevertheless upheld the conviction under the evidence by interpreting the statute to mean that a jail sentence could be imposed on a mine operator for any violation occurring in that mine, such responsibility being imposed based on the fact of the employment status alone. The Superior Court found it sufficient for the personal responsibility requirement of the statute that both Cano and Martin 'were in charge of the mine and that at the time of the accident, Martin was in charge'. (Opinion of the Superior Court, Appendix A, *infra*. p. 29a)."

The complete Superior Court statement as reported on page 29(a) states:

> "Defendants also contend that there is no evidence in the record that defendant Martin had knowledge of any old workings. Martin testified that he had no knowledge of old workings or

water anywhere. The other testimony indicated, however, that both he and Cano were in charge of the mine and that at the time of the accident Martin was in charge."

Nowhere does the Superior Court hold that the responsibility imposed upon Appellants is based on the fact of the employment status alone. On the contrary, it is clear that the Superior Court ruled that the liability was based upon the fact that the Appellants were in charge of the mine and as such were directly responsible for the occurrence of the violations involved. Defendants actually and actively operated the mine. The offense charged was not that of involuntary manslaughter. That death resulted from the statutory violations is not the essential element of the offense charged. It is, therefore, their negligence and not that of their employees for which they were tried.

THERE ARE NO FEDERAL QUESTIONS INVOLVED

CONCLUSION

There are no federal questions in this case. The conclusions of the Pennsylvania Courts rest upon adequate grounds under Pennsylvania law. The Appellants have not been deprived of any rights under the state or federal laws. This case does not involve vicarious liability In fact, the acts resulting in this prosecution were those of Appellants themselves.

Respectfully submitted,

LEON EHRLICH
Deputy Attorney General

THOMAS D. MCBRIDE
Attorney General
Attorneys for Appellees